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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,408	06/28/1999	ANDREAS FELLINGER	FLA-0010	6097

7590

03/24/2003

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/308,408

Applicant(s)

FELLINGER, ANDREAS

Examiner

Shian T. Luong

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 16, 18 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roulin et al (US 5,695,063). Roulin et al disclose two flexible film materials that are sealed at reference element 11 as shown in Figures 1A-1C to form a plurality of compartments. The cover sheet is torn by finger pressure. Roulin et al disclosed on column 1, lines 24-30 that “Push-through packs are e.g., such that the lid material is of aluminum foil or an aluminum foil laminate. Aluminum foil is a preferred material for the lids on a blister package, as the thickness of the material employed requires relatively little force for it to rupture. The foil is so thin in Roulin et al that even if the reference does not specifically disclose rupturing of the package by placing a finger directly on the cover, the cover is inherently capable of being rupture by pushing the foil inwardly.

Applicant argues that the blister pack is not flexible and the blister pack cannot be kept in stock rolled up configuration. However, on column 1, lines 20-23, Roulin et al. discloses that “if a single item e.g. a tablet is to be removed from a blister pack, the recess in the base is pressed in and the tablet is pushed through the lid material.” If the recess is being pushed inward, it would definitely have to be made out of flexible material. If the material were rigid, then a user would

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not be able to push through the package from the recess. Even if the material on Roulin et al. is not flexible, it would have been an obvious modification in view of its own background discussion to make the package flexible.

Moreover, if the package is flexible, it can be kept in a stocked roll up configuration. Applicant argues that the package does not remain rolled up but instead return to their flatten state upon release after being rolled up. This is not necessarily true for all blister packages. Some package returns to its initial flat state but others remain in a curled up position. Regardless, the claim only requires that the storage device can be kept in stock rolled up or concertinaed, but never requires that the package itself with that characteristic.

3. Claim 16-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Official Notice or Gas-X. Gas-X is a drug sold by Novartis since the 1980s for treating pressure and bloating. The package that contains Gas-X is generally a blister package made out of flexible plastic layer and a flexible foil layer. A plurality of compartment is formed on the plastic layer to receive the drug in pill or softgel form. When the package is bend in an arc shape or circular shape, it remains in that position. The examiner has spoken to Novartis Consumer Representative and confirmed that the package has been used from late 1980s or the beginning of 1990s. The reference cited in the IDS is a sample of the Gas-X outer package. The package hence anticipates claims 16-19 and 22.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roulin et al in view of Troll et al or Gregory et al. Roulin et al disclose all of the elements, but lacks the convex shaped compartment as recited in claims 17 and 19. However, Troll et al suggest providing, for example only, a convex shaped compartment with a lid sheet thereover. Gregory et al also teach a compartmented package with convex shaped base layer. Hence, it would have been obvious in view of Troll et al or Gregory et al to provide a convex shaped compartment for the base sheet of Roulin et al to conform to the shape of the intended article.

6. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 18, further in view of Hasegawa et al substituting for Official Notice. Roulin et al. or Gas-X does not suggest using paper as the covering film. However, Hasegawa et al suggest, as an example, a blister pack with a sterilized paper cover. It would have been obvious in view of Hasegawa et al to use paper as the cover layer for the package of Roulin et al as conventionally selected by one of skill in the art suitable for the intended purpose.

### ***Conclusion***

7. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information

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without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on T-F from 7:00am to 4:00pm EST.

STL  
March 20, 2003

  
Primary Examiner  
Shian Luong  
Art Unit 3728